JURISDICTION

The decree of the court below (R. 1582–1583) was entered on December 27, 1943. A petition for rehearing filed by petitioners (R. 1585–1600) was denied on February 8, 1944 (R. 1601). The petition for a writ of certiorari was filed on March 17, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

Whether there is substantial evidence supporting the findings of the Board, sustained by the court below, that petitioners Utah Copper Company and Kennecott Copper Corporation, dominated, interfered with, and supported successive labor organizations of their employees and thereby and in other respects interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 19–20.

STATEMENT

Upon the usual proceedings, the Board made its findings of fact and conclusions of law and

entered the order whose enforcement was decreed by the court below. The facts, as found by the Board and shown by the evidence, may be summarized as follows:[1]

Kennecott Copper Corporation and its wholly owned operating agent, Utah Copper Company, referred to herein collectively as the Company, for many years recognized and dealt with two labor organizations, each called the Employees' General Committee (herein referred to as the Committees), at its mills and mine, respectively (R. 69–72, 104; 1433, 1434). The Committee at the mills was disestablished in May 1938 after a Board Trial Examiner in a prior proceeding[2] found that the Company had illegally dominated, interfered with, and supported it (R. 72, 76; 220–221). Although the Company at the date of the hearing was continuing to recognize the Committee at the mine as the bargaining representative of its mine employees, petitioners do not contest the Board's findings that the Company has unlawfully dominated and supported the Committee (R. 105, 130; 1–9, 519). The Committees came into existence in 1919 when the Company presented the plan of organization to its employees

[1] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

[2] *Matter of Utah Copper Co., et al.*, 7 N. L. R. B. 928. The Board's decision in that case, upholding the findings of the Trial Examiner, was received in evidence in the instant case (R. 1418–1442, Bd. Exh. 2A).

and requested them to elect representatives to act for them in consulting with management (R. 104; 512–514, 1433, 1483–1485). No general membership meetings were ever held, but all employees by reason of their employment by the Company, were entitled to vote for representatives (R. 104; 515, 518–519, 846, 1434, 1436, 1484). Rules and procedures of the organizations could be changed only with the consent of management (R. 105–106; 512–514, 1436, 1483, Bd. Exh. 95). The Committees collected no dues, and all expenses incident to their maintenance were borne by the Company (R. 105; 514–516, 519–520, 1434–1435, 1486).

Soon after the issuance by the Trial Examiner of his Intermediate Report in the prior Board proceeding, officers and representatives of the Committee at the mills, at a meeting of the Committee, took steps to form another labor organization, the Independent Association of Mill Workers, herein called the Mill Association (R. 72, 100; 1452–1453, Bd. Exh. 5). They drafted a constitution in which they designated themselves as officers of the new labor organization and soon thereafter requested the Company to recognize the Mill Association and to grant a check-off of the dues of its members (R. 73–74; 198–200, 206–209, 301–302, 1466–1467, Bd. Exh. 8). The Company granted these requests after checking the Mill Association's membership application cards against the Company's pay roll (R. 74–75; 207,

328, 1468–1469, Bd. Exh. 11). This summary recognition was granted during the pendency of a representation proceeding which had been instituted before the Board on a petition filed by the International Union of Mine, Mill, and Smelter Workers, affiliated with the Congress of Industrial Organizations (herein called the C. I. O. affiliate), after the Company, in marked contrast to the treatment accorded the Mill Association, had insisted upon a formal determination by the Board of the C. I. O. affiliate's claim of majority status (R. 75–76; 1425, 1427, Bd. Exh. 2A).[3]

After granting recognition to the Mill Association as the exclusive representative of its mill employees, the Company posted a notice on its bulletin boards announcing such recognition and immediately thereafter informed the Committee that because the Mill Association represented a majority of the employees, the Company could no longer recognize the Committee (R. 76; 210–211, 220–221, 283–284, 890, 892). Shortly thereafter, on June 16, 1938, the Board issued its Decision and Order in the prior proceeding, confirming the findings of the Trial Examiner, ordering the Company to cease and desist from its unfair labor practices, to disestablish the Committee, and to post appropriate notices and, in addition, direct-

[3] The proceeding involving the representation question was consolidated with the prior proceeding based on the unfair labor practice charges mentioned *supra*, p. 3 (R. 75; 1420, Bd. Exh. 2A).

ing an election to be conducted at a time to be later determined by the Board (R. 77; 211, 1418–1443, Bd. Exh. 2A).

The Company, purporting to comply with the Board's order, posted a notice, which accompanied the statement that it would not engage in unfair labor practices with the assertion that it had not "at any time engaged in such practice," and disestablished the mill Committee only by stating that as a result of its recognition of the Mill Association, the mill Committee was disestablished (R. 77–78; 1452, Bd. Exh. 3).

Thereafter, on August 24, 1938, a consent election was conducted under the auspices of the Board to determine whether the mill employees desired to be represented by the C. I. O. affiliate or the Mill Association, or neither (R. 79; 1445–1449, 1564–1568, Bd. Exh. 2C, R. Exh. 15). Neither of the labor organizations received a majority of the votes polled (R. 79; 1446).[4] The Company, however, continued to recognize the Mill Association and to give it further support by granting it the use of the Company's bulletin boards and, in addition, constructing special bulletin boards for its use; by permitting it to solicit memberships at the mills during working hours;

[4] The C. I. O. affiliate received a plurality of the votes, but in a run-off election wherein the employees voted on whether or not they desired the C. I. O. affiliate to represent them, that organization failed to receive a majority of the votes cast (R. 79; 1446, 1449–1451, Bd. Exh. 2D).

by permitting its officers and representatives to spend from 50 to 80 percent of their working time in the investigation and handling of grievances and paying them for their time spent at this pursuit; and by permitting its members to use the Company's duplicating machine without charge (R. 77, 79, 95–96; 214–215, 217, 220, 228–229, 484–485, 821–822, 891–892, 1469, 1470, 1472–1473, Bd. Exhs. 12, 13, 32). Many of the Company's supervisory employees became members of the Mill Association and several of them served as officers or as members of its board of trustees (R. 90–93; 385, 400, 483–486, 810–811, 988, 995, 1469, 1478, 1511–1519, 1523–1524, 1527–1528, 1533–1536, 1539–1540, 1542–1543).

Another election conducted by the Board's Regional Office in July 1939 with the consent of the C. I. O. affiliate, the Mill Association and the Company, was won by the Mill Association (R. 80; 1571, Mill Exh. 42). Thereafter, in various ways in addition to those already mentioned, the Company gave unlawful support and assistance to the Mill Association. It solicited a number of the employees to join the Mill Association, kept a list of those who refused to join, and interrogated them concerning their reasons for not joining (R. 81–84; 443–444, 458–459, 472–474, 1027, 1050, 1390–1392); it distributed Mill Association application blanks to new employees along with their time cards, with the suggestion that the blanks

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be filled out and surrendered to the employees' foreman or timekeeper (R. 85–86; 441–443, 1029, 1388–1390, 1394, 1398–1400); it praised the Mill Association and disparaged the C. I. O. affiliate (R. 82–83; 464–465, 458–459, 1012); it assured the employees that their chances for advancement or transfer to more desirable jobs would be better if they joined the Mill Association (R. 84–85; 443, 1391–1392); and it reprimanded employees for talking in favor of or soliciting in behalf of the C. I. O. affiliate, even threatening some of them with discharge for doing so, but itself solicited and permitted other employees to solicit in behalf of the Mill Association (R. 82–89; 410–412, 420–421, 435, 454–455, 474, 1010–1011).[5]

Prior to the present proceeding no unfair labor practice charges with respect to the Mine Committee had been filed. However, when the Trial Examiner in the prior proceeding (referred to *supra,* p. 3) found the Committee at the mills to be unlawfully dominated and supported by the Company, a number of the mine Committee members, in anticipation that the Committee at the mine also would be declared illegal, formed the Independent Association of Mine Workers, herein

[5] The Company also rented the Association an office in a company-owned dormitory near the mills (R. 94–95; 374, 401–403). An employee who was recording secretary of the C. I. O. affiliate resided in one of the Company's dormitories, but the C. I. O. affiliate did not maintain offices in a dormitory (R. 405, 795, 1183).

called the Mine Association, as a counterpart to the Mill Association and as a potential successor to the Committee at the mine (R. 106; 199, 324–325, 527–528). The Mine Association was patterned after and assisted in its organization by the Mill Association (R. 107; 251–255, 487–492, 531, 533, 540).

Until the latter part of 1940, however, when several A. F. of L. unions attempted to organize the mine employees, the Mine Association was practically dormant (R. 107; 544–546, 551). Upon the advent of the A. F. of L. unions, the Mine Association was revived with the assistance and support of the Mill Association and the Company (R. 107–108; 544, 547, 551). Officers and trustees of the Mill Association attended meetings of the Mine Association, advised its leaders, furnished it with Mill Association literature free of charge, and assisted in the publication of a Mine Association newspaper (R. 107–108; 258, 260–261, 492–493, 546–547, 554, 556–560).

The Company in many ways through disparate treatment of the Mine Association and its rivals, the A. F. of L. and C. I. O. affiliates, and by open expressions of preference for the Mine Association and hostility to its rivals, encouraged and gave support to the one and discouraged membership in the others. Thus, when the A. F. of L. offered its assistance in the sale of war bonds through pay-roll deductions, the Company replied

that it could not discuss such matters with an "unrecognized" labor organization (R. 125–126; 576–579, 1102–1103). It gave a similar reply to members of the C. I. O. affiliate when they requested a conference for the purpose of discussing grievances; and when the C. I. O. members wrote the Company requesting the Company to meet with them as individuals to discuss the grievances, the Company did not answer the letter (R. 126–127; 578–579, 599, 603). In marked contrast, when the president of the Mine Association, which was also an "unrecognized" labor organization, requested a conference with the Company for the purpose of discussing grievances of the employees, the request was promptly granted (R. 127–128; 563–565, 1500). In addition, when the C. I. O. affiliate presented to the Company written authorizations from its members for a check-off of union dues, the Company summoned all subscribers to the authorizations to its office and questioned them so sternly concerning their signatures that many of them thought they were being discharged (R. 122; 1142, 1145–1146), and shortly thereafter the president and the secretary of the C. I. O. affiliate resigned from that organization (R. 122–123; 644, 1131–1132, 1135–1137, 1138, 1142–1143). Again, in striking contrast, when the Mine Association requested a check-off of the dues of its members based upon membership application cards submitted, the Company granted the request without calling in the individual subscribers for question-

ing, despite the fact that some of the membership application cards were dated more than 3 years prior to the request (R. 123–125; 270, 328–329, 561–562, 830–831, 1495).[6]

The Company, through its mine superintendent, foremen, and other supervisory employees, rendered further potent assistance to the Mine Association by urging its employees to withdraw from the C. I. O. and A. F. of L. affiliates and to join the Mine Association (R. 108–109, 110, 116; 606–608, 698–699, 771–775, 1404–1405); by deprecating the advantages to be obtained from membership in the A. F. of L. and C. I. O. affiliates and describing the payment of dues to those labor organizations as a waste of money (R. 109, 110, 117; 737–740, 748–750, 755, 813–815, 1081–1085, 1199–1200, 1235); by ordering employees to remove C. I. O. buttons from their apparel, but distributing and encouraging employees to wear Mine Association buttons (R. 109, 113–114, 115; 709–711, 768–769, 771, 1296–1297, 1305); by permitting solicitations for membership in the Mine Associa-

[6] An employer is required under Utah laws to grant requests for a check-off only when the requests are presented in the form of written authorizations from the employees. Chapter 14, Title 49 of the Utah Code, 1943, provides that—

> Whenever an employee * * * executes and delivers to his employer an instrument in writing whereby such employer is directed to deduct a sum * * * from his wages and to pay the same to a labor organization * * * as assignee, it shall be the duty of such employer to make such deduction and to pay the same * * * to such assignee * * *.

tion during working hours but reprimanding and threatening to discharge employees suspected of soliciting in behalf of the C. I. O. affiliate during working hours (R. 113, 119; 662–664, 742–744, 752–753, 1270–1272).

In concluding from the foregoing facts that the Company had dominated and supported the mine Committee, the Mine Association, and the Mill Association and had otherwise interfered with, restrained, and coerced its employees in their rights guaranteed them under the Act, thereby violating Section 8 (1) and (2) of the Act (R. 97–103, 106, 129–131), the Board considered and rejected the Company's defense that it had instructed its supervisory employees against interfering with the employees' rights guaranteed them under the Act for, as the Board noted, "such instructions were consistently violated," and although it was within the Company's "power to see that [the] instructions of non-interference were carried out, * * * there was no showing that any supervisory employee was ever disciplined for failure to carry out the instructions" (R. 78, 101–102).

The Board's order required the Company to cease and desist from its unfair labor practices, to withdraw recognition from and disestablish the mine Committee, the Mine Association, and the Mill Association, and to post appropriate notices (R. 179–180).

On April 1 and 5, 1943, respectively, the Company and the Mill Association filed in the court below petitions to review and set aside the Board's order (R. 1–17). The Board, on April 27, 1943, filed its answers and its petition for enforcement (R. 24–27). On December 6, 1943, the court handed down its opinion enforcing the Board's order (R. 1575–1581) and on December 27, 1943, entered its decree (R. 1582–1583). A petition for rehearing filed by the Company, the Mill Association, and the Mine Association (R. 1585–1600) was denied by the court on February 8, 1944 (R. 1601).

ARGUMENT

1. Petitioners' statement of the questions involved (Pet. 2) really raises only the issue of the substantiality of evidence supporting the Board's findings. The issue presents no question of general importance. Moreover, the evidence summarized in the Statement, *supra,* pp. 3–12, furnishes ample support for the challenged findings, as the court below held.

2. The opinion of the court below affords no basis for petitioners' assertion (Pet. 6–7, 20–21) that the majority of that court "evidently" failed to consider the evidence as a whole but segregated portions of the evidence from their setting in determining that the Board's findings were supported by substantial evidence. Petitioners themselves, by segregating from their context certain

excerpts from the opinion of the court below (Pet. 6, 7) and ignoring the balance of the opinion, have done just what they accuse the court below of having done. A reading of the entire opinion (R. 1575–1580) shows clearly that the court correctly understood and applied the principles applicable to its functions as a reviewing court. Indeed, the court expressly cited with approval and followed the principles governing judicial review of Board proceedings pronounced by this Court in *National Labor Relations Board* v. *Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U. S. 469; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584; *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401; *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292; and *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197.

3. It is asserted (Pet. 7–16) that the Company should not be held answerable for coercive statements made by its supervisory employees because those statements were unauthorized and forbidden by the Company, they were not shown to have been accompanied by actual discrimination, and

they were mere expressions of personal opinions of the supervisors.

The fact that conduct may be unauthorized or forbidden does not, of course, relieve the Company of responsibility for the interference of its supervisors. *H. J. Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514, 518–521; *International Ass'n of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 80. As the Fifth Circuit recently stated in *Birmingham Post Co.* v. *National Labor Relations Board,* decided February 8, 1944, 13 L. R. R. 762:

> It is firmly established that [the employer's] duty under the Act is not to give mere lip service to it with proclamations and instructions, but to use its authority to make its policy effective, and that if proscribed practices are carried on by supervisory employees so that the employer gains any advantage or the employees are put at a disadvantage in respect to the matter covered by the act, it is within the power of the Board to prevent repetition of such activities and to remove their consequences upon the employees' rights of self-organization, as fully where they are not as where they are employer directed. * * * the controlling consideration in a case of this kind is not moral culpability of the employer, nor is it one of conventional representation of the master

> by the employee. It is whether employees have been subjected to prohibited compulsions flowing from the employer's economic power which the employer could and should have prevented the use of.

The test is whether the employer may secure "any advantage in the bargaining process of a kind which the Act proscribes." *H. J. Heinz Co.* v. *National Labor Relations Board,* 311 U. S. 514, 521.[7]

It is obvious from the recital of facts, *supra,* pp. 3–12, that the Company did not make its prohibitions against interference effective or eradicate the effect of previous interference, and that its employees were subjected to prohibited compulsions. The statements of the Company's supervisory employees were, as the court below stated, "much more than mere casual or desultory expressions constituting only the utterance of individual views" (R. 1579); they clearly constituted "pressure exerted vocally." *National Labor Relations Board* v. *Virginia Electric & Power Co.,* 314 U. S. 469, 477; see also *International Ass'n of Machinists* v. *National Labor Relations Board,* 311 U. S. 72, 78.

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[7] See also *Sperry Gyroscope Co.* v. *National Labor Relations Board,* 129 F. (2d) 922, 927 (C. C. A. 2); *F. W. Woolworth Co.* v. *National Labor Relations Board,* 121 F. (2d) 658, 661 (C. C. A. 2); *Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87, 93 (C. C. A. 10).

4. Petitioners apparently contend (Pet. 12–13) that the choice of the Mill Association as the bargaining agent of the mill employees in a secret balloting conducted by the Board's Regional Director negatives any inference which might otherwise be drawn relative to the domination of that organization by the Company. However, no inference of freedom from employer interference and domination can be drawn where, as here, the organization has already received recognition and other forms of support and encouragement from the employer prior to the election (see pp. 4–7, *supra*). *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 248. Moreover, assuming *arguendo* that at the time of the election the Company had not unlawfully dominated and supported the Mill Association, the manifold instances of the Company's support and commendation of that organization and its contrasting opposition to and disparagement of the Mill Association's rival after the election (*supra*, pp. 7–8) warranted the Board's conclusion that the Mill Association was incapable of functioning as the truly independent, arm's-length, bargaining representative contemplated by the Act. Cf. *National Labor Relations Board* v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685, 692–695; *International Ass'n of Machinists*

v. *National Labor Relations Board,* 311 U. S. 72, 78-79.

CONCLUSION

The decision of the court below is correct and presents neither a conflict of decisions nor any question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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APRIL 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
>
> * * * * *
>
> SEC. 9. * * *
>
> (c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or

selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) * * * the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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